

prepared to express an intelligent opinion on the measures when the special session of the legislative convenes next January.

"The intense feeling aroused by Governor Warren's proposed health bills in the recent sessions showed how deeply concerned the people are over anything that affects their health," Mrs. Matlock pointed out.

"Yet most of them know very little about the laws that govern our insurance and hospitalization. Our job as a federation should include a thorough study of the existing laws and proposed bills, followed by a poll of our members so that next year we can say to our representatives: 'Here is what 10,000 women want in the way of health legislation.'"

"Most of the federation members are employed women, and that means that the provisions of the social security laws are of vital importance to them," Mrs. Matlock stated.

She is asking for another committee of five women from all parts of the State to study the status of social security laws, especially as they affect women, and to report their findings to district and local clubs. . . .—*Sacramento Union*, July 22.

MEDICAL JURISPRUDENCE†

HARTLEY F. PEART, ESQ.

San Francisco

Evidence of Malpractice

The case of *Dixon v. Norberg* (157 Pac. 2d 131), decided March 12, 1945, by the Supreme Court of Colorado, illustrates the very slight evidence which will justify submission of a malpractice case to a jury for decision, and will support a verdict against a defendant physician and surgeon.

In the *Dixon* case the undisputed testimony disclosed that the plaintiff, while eating, swallowed a small pork bone, which became lodged in her throat, and caused such distress that she visited the defendant physician's office immediately, with her husband, for treatment.

There the defendant, after making two unsuccessful attempts to remove the bone by means of an instrument carrying a piece of surgical cotton on it, told plaintiff that he could do nothing more for her and that she should consult a specialist. He then called another physician, who instructed him to take x-rays, which he did, and then sent plaintiff to the specialist. This physician, by means of an esophagoscope, removed the bone. He first located some cotton on the left side of the esophageal wall. This cotton was on the pork bone, and when the cotton was removed the bone came with it. Subsequent examination disclosed a tear in the esophageal wall. No damage was occasioned by use of the esophagoscope itself.

As a result of the tear in the esophagus plaintiff became seriously ill and brought this action against the defendant for malpractice, alleging that he had treated her negligently in attempting to remove the bone, thus injuring the esophageal wall.

Defendant testified that when plaintiff consulted him he detected a foreign body in her throat, and, by means of a laryngeal forceps with a piece of surgical cotton on the end, he tried to wipe this foreign body from the throat with a sweeping motion from below upward. Being unsuccessful, he called the specialist, who was ultimately successful in removing the bone. The defendant stated positively that he did not insert the forceps down the esophagus of the plaintiff to the point where the specialist testified the pork bone was located, and that it would have been physically impossible to have done so.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

Another physician, called by defendant as a witness, testified that the method used by defendant was approved in the general practice of medicine in the community.

Plaintiff testified that the defendant did put the forceps down her throat, and that she felt a sharp pain, and that immediately afterwards there was some hemorrhage.

There was medical testimony to the effect that the cotton might have been swallowed by plaintiff in the operations heretofore discussed, and in its journey down the esophagus, have come in contact with the bone and adhered thereto. It was also testified that the adherence of the cotton to the bone was so firm that the impact between the bone and the cotton must have been with more force than that involved in the act of swallowing. Although defendant testified that plaintiff complained of the foreign body being in the upper reaches of her throat, the specialist testified that when defendant telephoned him he had stated that the patient in the office had a bone in her esophagus.

Other medical specialists called by plaintiff, contrary to the testimony of defendant's witness, stated that the manner in which defendant probed for the bone in the esophagus was not good practice considering "the present standards in the profession for a general practitioner."

The jury rendered a verdict for the plaintiff in the sum of \$7000.00.

On appeal the principal question presented to the court was whether there was sufficient competent evidence in plaintiff's favor to warrant submission of the case to the jury. The court held that here there was a conflict in the testimony which warranted its submission to the jury, and the evidence in plaintiff's favor was sufficient to justify the verdict rendered.

The court approved the following instruction given to the jury by the trial court:

"You are instructed that in judging the proper degree of skill to be exercised by a physician or surgeon in any given case, regard is to be had to the advanced state of the profession at that time, and that a physician or surgeon by holding himself out to the world as such impliedly contracts that he possesses the reasonable degree of skill, learning and experience which good physicians and surgeons of ordinary ability and skill, practicing in similar localities, ordinarily possess, and that he will use his skill with ordinary care and diligence according to the circumstances of the case, and if you find that the defendant in this case did not use ordinary care and diligence then you will find for the plaintiff."

The Supreme Court, therefore, considered the testimony offered on behalf of plaintiff sufficient to establish a departure from the standard of care or degree of skill which justified a verdict against the defendant for malpractice.

LETTERS†

Concerning C. and W. M. article on "Black Widow Spider":

(COPY)

SIMMONS-BOARDMAN PUBLISHING CORPORATION

Chicago, Ill., 14 July 1945.

To the Editor: I am writing to you at the suggestion of the American Medical Association to ask if I may quote two or three paragraphs from an article which appeared in the November, 1935, issue of CALIFORNIA AND WESTERN MEDICINE.

The article in question deals with the Black Widow spider (*Lactrodectus mactans*), and was written by Dr. Russell M. Gray of Indio, California.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

If I am granted permission to use this material, I intend to incorporate it in an article I am writing on the Black Widow spider for one of the outdoor sports magazines. I should inform you that my article does not pretend to be the least bit technical, but instead attempts to acquaint outdoor men and women with the appearance of the spider and the location in which it is most likely to be found.

The section from which I would like to quote various paragraphs concerns Case No. 4, and also the "comment" which followed a report on that case.

Needless to say, full credit will be given in my article for any material I am permitted to use from your journal.

Yours very sincerely,

(Signed) H. E. MEASON,
Associate Editor.

Concerning Dr. L. J. Regan's article on "Malpractice Actions":

(COPY)

THE CONNECTICUT STATE MEDICAL JOURNAL

New Haven, July 16, 1945.

To the Editor: We would like very much to reprint an article by Dr. L. J. Regan on Malpractice Actions, which appeared in the February, 1945, issue of your journal, and I am writing to ask permission to do this. We will, of course, give you full credit for the original publication. (Ed. Note.—Permission to reprint was given.)

Very truly yours,

(Signed) HERBERT THOMS, M.D.,
Editor.

Concerning Reaction of an Over-Seas C.M.A. Member to Proposed Compulsory Sickness Insurance Bills:

25 June, 1945.

To the Editor: Please allow me to congratulate the California Medical Association for having waged such a successful fight against Compulsory Health Insurance. The Association has earned and won the undying gratitude of every physician in the Armed Service. To see such a united front presented by the Association in these days of great stress is indeed gratifying. . . .

It is indeed heartening to those of us so far from home to know that the California Medical Association has spoken as one voice and has proclaimed to the social planners and to the world that the enemies of scientific medicine who continue to dissipate their energies in the persistent espousal of lost causes, will not be able to use California as a proving ground for any crackpot schemes that have to do with the care of the sick.

It has long been a source of interest to me that the reformers who have invariably made failures of their own endeavors have always been the first to take up the cudgels in order to assist someone else to achieve the more abundant life.

I am at this very moment en route from a visit to a foreign country which has had Socialized Medicine for years—a country which by virtue of its compactness and homogeneous population should be ideal for this type of medical practice.

My one regret is that Governor Warren, whose sincerity I have never questioned, could not have accompanied me.

Here could be seen Socialized Medicine as it *really* is—not as the politicians and social planners who have come to know more about medical practice than the doctors themselves, would have you believe, but how it is actually looked upon by patients and physicians alike. First of all, the patients do not like it and the doctors

do not care, because they are all government employees and are not by any means a progressive type of medical man. If any specialized care were needed they availed themselves of the American doctors in the Army Hospital.

In the best civilian hospital the equipment was about what would be found in a small town American Hospital in the year 1910. An American Army doctor had come down several weeks previously and put a body cast on a patient and this procedure was of sufficient magnitude in the minds of the hospital personnel to still be the principal topic of conversation.

The better accommodations consisted of small rooms just large enough for two beds and room to walk between them. A large crust of bread thrown carelessly on a little stand at the head of each bed for the patients to gnaw on between meals bore mute evidence of the lack of finesse and adequate nursing facilities in this, their leading hospital.

What a garish contrast this picture presents between the best hospital available in a country with Socialized Medicine and our own magnificent American hospitals to which poor and rich alike may have access by paying a pittance in the form of Voluntary Hospital Insurance.

But this is not the real tragedy, because perhaps a crust of bread and a little less hospital luxury might have a salutary effect upon a great mass of pampered Americans. The real tragedy is the same tragedy that will befall America, not with the advent of Socialized Medicine, but will follow inevitably in its wake. I refer to the inferior caliber of medical men content to work under such a system. Here is a glaring example of a high grade American doctor, a product of free enterprise in a free America, whose ideals which we are supposed to be fighting to preserve, being called to a hospital to apply a body cast, simply because the political doctors had not had sufficient training to perform this elementary procedure.

So it is easy to see that what at first might be a pleasant rarity may soon become an opulent curse. Less than one generation under Socialized Medicine will lower the caliber of our medical men in these United States to the level just described, and let me say to the politicians and social planners who are attempting to foist this diabolical scheme on the American people that subsequent years will prove only too eloquently the justice of my belief. . . .

Of course the fight is far from won and there is no room for complacency. . . .

I cannot refrain from reminiscing for a moment and looking back up the avenues of time to the autumn of 1933 and the Annual Meeting of the American College of Surgeons in Chicago. The late Dr. J. Bentley Squier of New York who was president of the College presented a most eloquent and scholarly retiring address. He spoke of the unforeseen machinations that might endanger the high class system of medical practice as we know it today and sounded a warning note against Socialized Medicine when he said: "To be merely a cog in the wheel of a great machine can never be the ambition of those who have raised Medicine to its present high position or of those who have carried it onward."

He stated further that: "Any system which tends to lessen individual initiative cannot be the system which in the end will most stimulate scientific progress."

And in this connection with the stirring words of J. Bentley Squier still ringing in my ears an interesting thought comes into my mind. That thought is that the politicians, social planners and Doctors of Philosophy who have come to look upon themselves as better custodians of the people's health than the Doctors of Medicine who have performed this function so admirably for more than two thousand years, will not have to wait a